IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4406 & 4422 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAMNAGAR MUNI. CORPO. - Petitioner(s)
Versus
MAJOOR MAHAJAN SANGH - Respondent(s)

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Appearance :
MR PREMAL R JOSHI for Petitioner(s) : 1,
None for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 10/03/2006

ORAL JUDGMENT

Heard learned advocate Mr. Premal R. Joshi on behalf of the petitioner – JAMNAGAR MUNICIPAL CORPORATION. The petitioner has challenged

interim order passed in Reference (IT) No.37 of 2002 vide Exh.10 dated 10th October, 2005 and review application no.1 of 2005 in Reference (IT) No.37 of 2002 dated 30th November, 2005. In Special Civil Application No. 4422 of 2006, similar question has been raised by Jamnagar Municipal Corporation by challenging order below Exh.6 in Reference (IT) No. 13 of 2005 dated 10th October, 2005 and order on review application no.2 of 2005 in said Reference (IT) No.13 of 2005 dated 30th November, 2005. Industrial Tribunal, Rajkot granted interim relief as prayed for by the Union and against that, review application was rejected by the industrial tribunal, Rajkot.

Learned advocate Mr. Joshi appearing for petitioner submitted that the industrial tribunal has no jurisdiction to grant interim relief in favour of union. He also submitted that section 10(4) of the ID Act, 1947 is not empowering the tribunal to pass any interim order. He also

submitted that the petitioner has not terminated service of concerned workmen and no decision has been taken to alter their service condition but petitioner advertised one notice dated 24.7.2005 wherein petitioner required driver on contract basis. Learned advocate Mr. Joshi submitted that it is the right of employer to employ as many as employees they require on contract basis or on regular basis and for that, tribunal has no jurisdiction to restrain petitioner from recruiting workmen, therefore, according to his submission, tribunal has committed an error in granting interim relief in favour of respondent workmen. Mr. Joshi also contended that the interim relief granted by the tribunal amounts to granting of final relief at interim stage. this contention raised by Mr. Joshi is required to be rejected on the ground that the main relief in the reference is for regularization of their service of concerned tractor driver and interim relief is relating to protection of their

existing service condition restraining petitioner from engaging or employing any tractor driver on contract basis, therefore, main relief in pending reference and the relief granted by the tribunal as per the impugned order which is under challenge in these both petitions are different from each other and, therefore, the contention raised by Mr. Joshi cannot be entertained and the same is rejected as misconceived. Except the contentions recorded herein above, no other contention was raised by Mr. Joshi before this Court. No decision has been cited by Mr. Joshi before this Court in support of his contentions.

I have perused order in question passed by industrial tribunal below Exh. 6 and 10 and I have also perused order passed on review application in both the matters. Question is that a reference under section 10(1) was referred to the tribunal for adjudication by the appropriate government wherein daily wager tractor drivers

those who are working in solid waste department have raised demand to make them permanent with effect from 1st January, 2000 with all benefits and allowance. Similar dispute was raised and referred to for adjudication in other matter where the workmen whose reference have been mentioned in annexure, working in solid waste department as tractor driver that they may be made permanent with effect from 1st May, 2001 and to grant regular salary in the scale with house rent allowance, DA, medical allowance, medical leave with retrospective effect. Union also submitted an application dated 30.7.2005 wherein it was prayed that the petitioner has issued notice dated 24.7.2005 in Sandesh news paper calling for short quotation notice to supply tractor driver on contract basis against which prayer is made by union to set aside the advertisement and mean while direct petitioner not to employ any tractor driver on contract basis. Before the tribunal, reply was filed by

petitioner wherein, in para 5, it was averred by petitioner that they are entitled and competent to employ tractor driver on contract basis and for that, tribunal has no jurisdiction to interfere as petitioner has not passed any order of termination against any employee. It is also contended that the petitioner is not altering any condition of service of workman and that without following procedure of law, petitioner is not going to pass any order against concerned workmen. Such reply was submitted on 26th September, 2005. Thereafter, matter was argued by the respective parties before the tribunal. Ultimately, tribunal considered submissions made by the learned advocates for parties and gave reasons in para 8 of the order. Tribunal considered that at this stage, if the interim relief is not granted in favour of workmen, then, subsequently after employing on contract basis tractor driver, petitioner may terminate services of workmen concerned. One question was asked by

this Court to Mr. Joshi that what is the justification on behalf of the petitioner for issuance of notice dated 24th July, 2005 calling for tractor driver on contract basis. He fairly submitted that there is no justification whatsoever pointed out by the petitioner before the industrial tribunal for the said advertisement for engagement of tractor driver on contract basis. When the tractor drivers are working with the petitioner on daily wage basis since many years, and when the dispute/demand has been raised by them for regularization of their service and for permanency benefit and when it has been referred to for adjudication, issuance of such advertisement without pointing out justification thereof suggests malice on the part of petitioner against workmen concerned. Reply filed by the petitioner indicate that in case necessity arise, then, services of the workmen concerned can be terminated by petitioner after following proper procedure. Where is the question

of terminating services of workmen? When on one hand, petitioner wants to engage tractor driver on contract basis, then, what is the justification for terminating services of workmen. In such circumstances, tribunal has examined merits and has also considered the aspect of hardships and balance of convenience and prima facie case and on that basis, tribunal directed petitioner to maintain status quo till the final out come of pending reference. Tribunal directed the petitioner to maintain status quo and not to alter service condition of concerned workmen till the final out come of pending reference wherein workmen are concerned. Against this order, review application was filed by petitioner. There is no provision in the ID Act, 1947 which would give power to the tribunal to review its own order once it is passed under the provisions of the ID Act, 1947. There are number of decisions which have been considered by the tribunal that the tribunal has no power to

review its own order. In Sudhir Janardhan Desai v. Hyphosphite & Co. & Ors., 2004 III CLR 671, (Bombay High Court), it has been observed as under as regards powers of labour court to review its own order.

> "7. The Labour Court is a creature of the statute i.e. The Industrial Disputes Act, 1947. Therefore, whatever powers are to be exercised by the Labour Court are circumscribed by the powers conferred on it by the statute. The labour court cannot exceed such powers. On a perusal of the Act as well as the Rules framed thereunder, there is no express power conferred on the Labour Court for reviewing its own order neither is there is any implied power. As held in the case of Patel Narshi Thakershi (supra), the power of review is not an inherent power. It must be conferred by law, either specifically or by necessary implication. There is no provision in the industrial Disputes Act or the Rules framed thereunder, conferring such a power specifically or by necessary implication on the Labour Court. The Labour Court has been empowered under the Industrial

> Disputes Act to adjudicate references relating to matters falling within the Second Schedule of the Act. It can compute any amount or benefits which can be computed in terms of money, accruing to a workman. The Labour Court is vested with the power for setting aside an ex parte order or award. But there is no power of review conferred on it at all."

Therefore, if there is any grievance remaining with the petitioner against the interim order, petitioner is entitled to challenge the same before this Court, therefore, tribunal was right in rejecting application for review as the petitioner was not able to point out before the tribunal that the tribunal has power to review its own order. According to my opinion, in doing so, no error was committed by tribunal.

While examining these two petitions, this court has considered that the petitioner is challenging interim order of the tribunal through these petitions. Therefore, jurisdiction of this court is limited to entertain such petitions

challenging the order which are interim or interlocutory in nature. During the pendency of reference which has been referred to by the appropriate Government to the tribunal, scheme of the Act provides that once reference is pending before any industrial tribunal/labour court, then, it is the statutory obligation on the part of the employer to maintain status quo as regards service condition of the employees those who are concerned in the pending reference. Section 33-1 of the ID Act, 1947 is very much clear that during the pendency of any conciliation proceedings or industrial dispute, pending before Tribunal/Labour Court, no employer shall, in regard to any matter connected with the dispute, alter to the prejudice to the workmen concerned in such dispute condition of service applicable to them similarly before the commencement of such proceedings save with the express permission in writing of the authority before which such proceedings are pending. These provisions of

section 33-1 have been interpreted by apex court in Bhavnagar Municipality versus Alibhai Karimbhai and others reported in AIR 1977 SC 1229. Before the apex court, a similar question had arisen as narrated in paragraph 12. As per the facts of the said reported decision, demand was raised by workmen concerned for conversion of their temporary status to their employment into permanent. These workmen were in service for over years. They were claiming permanency in their employment on their putting in more than ninety days service. While this particular dispute was pending before the tribunal, the appellant Bhavnagar Municipality (Jamnagar Municipal Corporation herein) decided to entrust the work which had till then been performed by these workers in the water works section to contractor. On the employment of contractor by municipality for similar work, services of the respondents become unnecessary and then appellant passed orders for retrenchment. Similarly, in this case,

stage of termination and/or retrenchment has yet not come but apprehension is there on the ground of averments made by petitioner in the reply that they are entitled to terminate services of workmen concerned in accordance with law. Relevant discussion made by the apex court in said reported decision having identical facts in paragraphs 12, 13 and 14 is reproduced as under:

> "12. Before we proceed further we should direct our attention to the subject matter of the industrial dispute pending before the tribunal. It is sufficient to take note of the principal item of the dispute, namely, the demand of the respondents for conversion of temporary status of their employment into permanent.To recapitulate briefly the appellant employed daily rated workers to do the work of boring and hand pumps in its water works section. These workers have been in employment for over a year. They claimed permanency in their employment on their putting in more than 90 days service. They also demanded two pairs of uniform every year cycle allowance at the rate of rupees 10.00

p.m. Provident fund benefit and national holidays and other holidays allowed to the other workers. While this particular dispute was pending before the tribunal,t he appellant decided to entrust the work, which had till then been performed by these workers in the water works section, to a contractor. On the employment of the contractor by the municipality for the self same work, the services of the respondents became unnecessary and the appellant passed the orders of retrenchment. It is, therefore, clear that by retrenchment of the respondents even the temporary employment of the workers ceased while their dispute before the tribunal was pending in order to improve that temporary and insecure status.

13. Retrenchment may not ordinarily, under all circumstances, amount to alteration of the condition of service. For instance, when a wage dispute is pending before a tribunal and on account of the abolition of a particular department the workers therein have to be retrenched by the employer, such a retrenchment cannot amount to alteration

of the conditions of service. In this particular case, however, the subject matter being directly connected with the conversion of the temporary employment into permanent, tampering with the status quo ante of these workers is a clear alteration of the conditions of their service. The alteration of the method of work culminating in termination of the services by way of retrenchment in this case has a direct impact on the adjudication proceeding. The alteration effected in the temporary employment of the respondents which was their condition of service immediately before the commencement of the proceeding before tribunal, is in regard to a matter connected with the pending industrial dispute.

14. The character of the temporary employment of the respondents being a direct issue before the tribunal, that condition of employment, however insecure, must subsist during the pendency of the dispute before the tribunal and cannot be altered to their prejudice by putting an end to that temporary condition. This could have been

done only with the express permission of the Tribunal. It goes without saying that the respondents were directly concerned in the pending industrial dispute. No one can also deny that snapping of the temporary employment of the respondents is not to their prejudice. All the five features adverted to above are present in the instant case. To permit rupture in employment in this case without the prior sanction of the tribunal will be to set at naught the avowed object of section 33 which is principally directed to preserve the status quo under specified circumstances in the interest of industrial peace during the adjudication. We are, therefore, clearly of opinion that the appellant has contravened the provisions of section 33(1)(a) of the Act and the complaint under section 33Aat the instance of the respondents is maintainable. The submission of Mr. Parekh to the contrary cannot be accepted. "

Similar view has been taken by apex court in The Straw Board Manufacturing Co. Ltd., Saharanpur versus Govind, reported in AIR

1962 SC 1500. Relevant paragraphs (3) and (4) of said decision are reproduced as under:

> "(3) Before however we turn to the interpretation of the proviso, we may refer to the circumstances in which S. 33(2) came to be enacted. Originally there was no such provision like S.33(2) in the Act and the only provision to be found therein corresponded to the present S. 33(1). The object behind enacting S.33 as it was before the amendment of 1956 was to allow continuance of industrial proceedings pending before any authority prescribed by the Act in a calm and peaceful atmosphere undisturbed by any other industrial dispute. The plain object of the section was to maintain the status quo as far as possible during the pendency of any industrial dispute before a tribunal. But it seems to have been felt that S.33, as it stood before the amendment of 1956 was too stringent for it completely took away the right of the employer to make any alteration in the conditions of service or to make any order of discharge or dismissal without making any distinction as to whether such alteration or such an order of discharge

or dismissal was in any manner connected with the dispute pending before an industrial authority. It seems to have been felt therefore that the stringency of the provision should be softened and the employer should be permitted to make changes in conditions of service etc. which were not connected with the dispute pending before an industrial tribunal. For the same reason it was felt that the authority of the employer to dismiss or discharge a workman should not be completely taken away where the dismissal or discharge was dependent on matters unconnected with the dispute pending before any tribunal. At the same time it seems to have been felt that some safeguards should be provided for a workman who may be discharged or dismissed during the pendency of a dispute on account of some matter unconnected with the dispute. Consequently, S.33 was redrafted in 1956 and considerably expanded. It is now in five sub sections while before 1956 it consisted practically of what is now sub-s.(1).

(4) The present scheme therefore of

S.33 is as under:-

Sub section (1) refers to matters connected with a dispute which might be pending and forbids any alteration to the prejudice of the workman concerned in such dispute, in the conditions of service applicable to them immediately before the commencement of the industrial proceedings resulting from such dispute and also forbids the employer from discharging or punishing any workman whether by dismissal or otherwise in connection with any matter connected with the dispute and the employer, if he wants to make any alteration in the conditions of service or to punish any workman or discharge him, must get the express permission of the authority before which the proceeding relating to the dispute might be pending. Thus, sub-s.(1) lays down that if an employer proposes to alter any conditions of service or proposes to punish or discharge a workman in relation to a matter connected with the dispute which might be pending before a tribunal the employer must put such proposal before the tribunal and obtain its express opinion in writing before

carrying out the proposal whether it be for alteration of any conditions of service or for punishment or discharge of a workman by dismissal or otherwise."

In Sharma (P.D.) and State Bank of India, reported in 1969-I-LLJ 513, the apex court observed as under at pg. 518 and 519 of judgment:

"In Strawboard Manufacturing Company v. Govind [1962-I-LLJ 420 at 423], this Court observed:

'..... The plain object of the section was to maintain the status quo as far as possible during the pendency of any industrial dispute before a tribunal.But it seems to have been felt that S.33, as it stood before the amendment of 1956, was too stringent for it completely took away the right of the employer to make any alteration in the conditions of service or to make any order of discharge or dismissal without making any distinction as to whether such alteration or such an order of discharge or dismissal was in any manner connected with the dispute pending before an industrial authority. It seems to have been felt, therefore, that the stringency

of the provision should be softened and the employer should be permitted to make changes in conditions of service, etc., which were not connected with the dispute pending before an industrial tribunal. For the same reason, it was felt that the authority of the employer to dismiss or discharge a workman should not be completely taken away where the dismissal or discharge, was dependent on matters unconnected with the dispute pending before any tribunal. At the same time it seems to have been felt that some safeguards should be provided for a workman who may be discharged or dismissed during the pendency of a dispute on account of some matter unconnected with the dispute. Consequently, S.33 was redrafted in 1956 and considerably expanded.'

By enacting S.33, the Parliament wanted to ensure a fair and satisfactory inquiry of an industrial dispute undisturbed by any action on the part of the employer which could create fresh cause for disharmony between him and his employees. The object of S.33 is that during the pendency of an industrial

dispute status quo should be maintained and no further element of discord should be introduced. But then distinction was made between matters connected with the industrial dispute and those unconnected with it."

In Lokmat Newspapers Pvt. Ltd. Versus Shankarprasad, 1999 SCC (L&S) 1090, apex court observed as under in para 30, at pg. 1115:

"30. On the contrary, we find that the aforesaid decision has taken a correct view on the question posed for our consideration in the present case. In view of the aforesaid discussion, therefore, there was no escape from the conclusion to which the Division Bench in the impugned judgment reached that on 22.6.1982 when the order of retrenchment was passed against the respondent, the appellant Management had committed breach of Section 33(1) of the Act by not passing the said order after obtaining express previous permission in writing of the Conciliation Officer before whom the conciliation proceedings must be held to be pending in the evening of 22.6.1982. The impugned retrenchment order must be held to be illegal being contrary to the

aforesaid provision of the ID Act. Point NO.2 is, therefore, answered in the affirmative against the appellant and in favour of the respondent."

Therefore, in view of the above decision of the apex court and also considering the object of section 33-1 which itself gives mandate to the employer during the pendency of reference not to alter service condition to the prejudice of the workmen concerned. Considering all these aspects of the matter,tribunal directed petitioner to maintain status quo which is otherwise required to be maintained by petitioner under the statutory compulsion. Tribunal passed order under section 10(4) which is empowering tribunal to pass appropriate orders in respect of incidental matter when main dispute is pending before him. Situation which has been created by the corporation by issuing advertisement notice in daily news paper Sandesh calling tractor driver on

contract basis is, definitely, an incidental matter to the main dispute, therefore, tribuanl has jurisdiction and has power to pass appropriate interim order for protecting service condition of concerned workmen those who are concerned in pending reference. Otherwise, if the service condition would not be protected by tribunal during the pendency of reference,then, the natural result would be the termination of concerned workmen and natural consequence thereof would be that the pending reference would become infructuous and meaningless and that is not the scheme or object of the ID Act, 1947, therefore,according to my opinion, industrial tribunal has rightly granted interim relief protecting service condition of concerned workmen by directing petitioner to protect service condition by maintaining status quo during the pendency of reference and in doing so, according to my opinion, no error has been committed by

tribunal and, therefore, impugned orders of tribunal would call for no interference of this court in exercise of the powers under Article 227 of the Constitution of India. Tribunal has not committed error in rejecting review application as tribunal is having no power to review its own order. Further, this being an interim or interlocutory order, petition challenging such interim order cannot be entertained by this court as per the decision of this Court in Gujarat Electricity Board v. Hitendra Chhitubhai Patel, 2003 I CLR 437. This court observed as under in paragraph 8 and 9 as under:

> "8. I have considered the submissions made by the learned advocates for the parties. I have also perused the order in question made by the labour court. First of all, it is required to be noted that in special civil application no. 5644 of 1997, the petitioner is challenging the orders passed by the labour court in recovery applications wherein this Court has passed the orders on 12th August, 1997 whereas the petitioner has moved the application on 29th March, 2001 after the evidence of the workman was over before the labour court and, therefore, apparently, it is an application moved by the petitioner only with a view to delay the proceedings of the reference before the labour court. This aspect has been examined by the apex court and by this court in aforesaid decisions relied upon by Mr. Clerk. I have also perused the order below Exh. 49. I have also considered the reasons assigned by the labour court for rejecting the application Exh. 49. According to my opinion, the labour court was right in observing that the

application has not been moved by the petitioner in time or immediately after the orders were made by this court in aforesaid petition and, therefore, the labour court was right in observing that there is no bona fide in moving such an application by the petitioner. The labour court was right in holding that after rejection of the application Exh. 44 for stay of proceedings of the reference, second application Exh. 49 for the similar prayer cannot be entertained and, therefore, the labour court has rightly observed that instead of producing the evidence by the petitioner where more than seven months have passed after the evidence of the workman has become over, the petitioner board has filed such an application which is nothing but delay tactics on the part of the petitioner and, therefore, the labour court has rightly rejected the application Exh. 49.

9. One more aspect is required to be noted that in this petition, the order under challenge is an interim order passed by the labour court below Exh. 49. This aspect has been considered by this Court in case of Cadila Health Care Ltd. versus Union of India and Others reported in 1998 (2) GLH 513. This Court has observed that under Article 226/227 of the Constitution of India, a petition is filed challenging interlocutory order where the order is not deciding the case finally, in that event, even if the interlocutory order is illegal, in absence of failure of justice and in view of the right to challenge the said order when it become final, petition against interlocutory order is not maintainable. In para 11 of the said judgment, it has been observed by this court as under :

> "11. The matter is yet to be examined from another angle. From the scheme of the Act, 1958, it transpires that the application for registration of trade marks has to be disposed of expeditiously. Otherwise also, leaving apart the scheme of the Act aforesaid whether it is a proceeding before the Civil Court or Criminal Court or before this Court or even before any quasi judicial authority or administrative authority, the same has to be disposed of expeditiously. This object, as well in some of the cases the mandate of the statute, can only be achieved or attained where the Courts which are having powers of superintendence or extraordinary powers under Article 226 of the Constitution of India, do not permit the parties to stall the final adjudication of the matter by questioning the decision of the authorities with regard to interlocutory matters when the matter, if worthy, can be agitated even after final orders are passed. I consider it to be fulfil here to make reference to the decision of the Apex Court in the case of The Cooper Engineering Ltd. v. P.P. Mundhe, reported in AIR 1975 SC 1900. The apex

court in this case held;

> '10. In Management of Ritz Theatre (P) Ltd. v. Its Workmen (AIR 1963 SC 295), this Court was required to deal with a matter ingenious argument. It was contended in that case by the workmen, in support of the tribunal's decision that since the management at the very commencement of the trial before the Tribunal adduced evidence with regard to the merits of the case, it should be held that it had given up its claim to the property or validity of the domestic enquiry. While repealing this argument, this Court made some significant observations;
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> 'In enquiries of this kind, the first question which the Tribunal has to consider is whether a proper enquiry has been held or not, Logically, it is only where the Tribunal is satisfied that a proper enquiry has not been held or that the enquiry having been held properly the findings recorded as such an enquiry are perverse, that the Tribunal derives jurisdiction to deal with the merits of the dispute....
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> If the view taken by the Tribunal was held to be correct, it would lead to this anomaly that the employer would be precluded from justifying the dismissal of his employee by leading additional evidence unless he takes the risk of inviting the Tribunal to deal with the merits for itself, because as soon as he asks for permission to lead additional evidence, it would follow that he gives up his stand based on the holding of the domestic enquiry. Otherwise, it may have to be held that, in all such cases, no evidence should be led on the merits unless the issue about the enquiry is tried as a preliminary issue. If the finding on that preliminary issue is in favour of the employer, then, no additional evidence need be cited by the employer; if the finding on the said issue is against him, permission will have to be given to employer to cite additional evidence."

In the facts and circumstances of this case and also in view of the decisions referred to above, since the impugned order is interim and interlocutory order in nature, challenge to such orders through writ petitions cannot be entertained and, therefore also, these petitions are required to be rejected.

As regards contention of Mr. Premal Joshi that the Industrial Tribunal has no jurisdiction to grant interim relief under section 10(4) of the Act and, that the interim relief cannot be granted as it amounts to granting final relief, this contention raised by Mr. Joshi is required to be rejected on the ground that the main relief in the reference is for regularization of their service of concerned tractor driver and interim relief is relating to protection of their existing service condition restraining petitioner from engaging or employing any tractor driver on contract basis, therefore, main relief in pending reference and the relief granted by

the tribunal as per the impugned order which is under challenge in these petitions both are different from each other and, therefore, the contention raised by Mr. Joshi cannot be entertained and the same is rejected as misconceived. Further, the industrial tribunal has power to grant interim relief under section 10(4) of the ID Act, 1947. This aspect is decided by apex court in The Management Hotel Imperial, New Delhi and others v. Hotel Workers' Union, AIR 1959 SC 1342. In paragraph (21) of said judgment, apex court observed as under:

> "(21) After a dispute is referred to the tribunal under S.10 of the Act, it is enjoined on it by S. 15 to hold its proceeding expeditiously and on the conclusion thereof submit its award to the appropriate government. An 'award' is defined in S.2(b) of the Act as meaning 'an interim or final determination by an Industrial Tribunal of any industrial dispute or of any question relating thereto. Where an order referring an industrial dispute has been made

specifying the points of dispute for adjudication, the tribunal has to confine its adjudication to those points and matters incidental thereto; [S.10(4)]. It is urged on behalf of the appellants that the tribunal in these cases had to confine itself to adjudicating on the points referred and that as the question of interim relief was not referred to it, it could not adjudicate upon that. We are of opinion that there is no force in this argument, in view of the words 'incidental thereto' appearing in S. 10(4). There can be no doubt that if for example, question of reinstatement and/or compensation is referred to a tribunal for adjudication, the question of granting interim relief till the decision of the tribunal with respect to the same matter would be a matter incidental thereto under S.10(4) and need not be specifically referred in terms to the tribunal. Thus interim relief where it is admissible can be granted as a matter incidental to the main question referred to the tribunal without being itself referred in express terms."

Also see the decisions in this regard namely (1) State of Maharashtra and others v. Admane Anita Moti and others, AIR 1995 SC 350; Goa MRF Employees' Union v. MRF Ltd. & Anr., 2003 III CLR 60 [Bombay High Court (Goa Bench)]; V. Paramasivan and Management of Madras Rubber Factory and another, 2001 (90) FLR 4; B.G. Sampat and State of West Bengal and others reported in 1999 (83) FLR 1078; EID Parry (India) Ltd. And Another reported in 1993-II-LLJ 1,Madras; Voltas Employees Union and Voltas Ltd. And another reported in 2002 (93) FLR 731.

In view of the above decision and discussion, this contention of Mr.Joshi is rejected.

Therefore, there is no substance in these petitions and same are required to be rejected. Accordingly both the petitions are rejected.

(H.K. Rathod,J.)

Vyas